

EXHIBIT 3

ORIGINAL

PAGES 1 - 113

EXHS. 1 - 11

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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Jonathan Bejar

*

v.

*

Civil Action

Stanley Fastening Systems,

*

No. 04-10233-RCL

L.P.

*

* * * * *

Deposition of Jonathan Bejar

Tuesday, April 27, 2004

Smith & Duggan LLP

Lincoln North - 3rd Floor

55 Old Bedford Road

Lincoln, Massachusetts 01773

----- J. EDWARD VARALLO, RMR, CRR -----

COURT REPORTER

FARMER ARSENAULT BROCK LLC, BOSTON, MASS.

617.728.4404

Jonathan Bejar

6

1 A. Yes.

2 Q. Would that have been in December of 2000?

3 A. I really can't remember, but it sounds
4 about right, yes.

5 Q. Prior to becoming employed with Care Free
6 Homes, had you used pneumatic tools?

7 A. Yes.

8 Q. In what capacity?

9 A. I built a couple of additions with my
10 stepfather and have used his nail guns before.

11 Q. And where was that?

12 A. In Rochester.

13 Q. Rochester, Massachusetts, or Rochester,
14 New York?

15 A. Rochester, Massachusetts.

16 Q. What is your stepfather's name?

17 A. Timothy Westgate.

18 Q. Where does he live?

19 A. In Rochester.

20 Q. Do you know the address?

21 A. Yes. It's 7 Randall Road.

22 Q. Is that the location of the two additions
23 that you built?

24 A. Yes.

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7

1 Q. Could you describe for me the additions
2 you built?

3 A. The one is, I guess you would say it would
4 be a bigger family room and then an extra bathroom
5 and bedroom.

6 Q. And you used pneumatic nailers on that
7 project?

8 A. Yes, sir.

9 Q. What kind of pneumatic nailers, do you
10 know?

11 A. I don't recall what kind.

12 Q. Do you recall who manufactured them?

13 A. No.

14 Q. You don't know if they were Hitachi or
15 Stanley or DeWalt?

16 A. No, I don't remember.

17 Q. Had you used pneumatic tools on any other
18 occasion prior to becoming employed by Care Free
19 Homes?

20 A. Yes. I used them a couple of times with a
21 friend that redid basements.

22 Q. Who was that?

23 A. His name was Jamie. I'm not sure of his
24 last name. He was just someone that my wife at the

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9

1 in the basement job?

2 A. A framing nailer.

3 Q. Did you drive nails -- What size nails did
4 it drive?

5 A. I believe it's three-inch.

6 Q. And was the tool, the cartridge a stick or
7 a cylinder?

8 A. I don't understand.

9 Q. How did it blow the nails? Was it in a
10 stick form, straight --

11 A. Yes.

12 Q. -- or was it in a cartridge, round?

13 A. It was straight.

14 Q. Was it a Stanley tool?

15 A. I can't remember. I don't -- I didn't
16 really pay attention then.

17 Q. Did you use pneumatic nailers on any other
18 projects before going to work for Care Free Homes in
19 December of 2000?

20 A. I'm sure I have. But to remember, I can't
21 really think of any other times.

22 Q. Would it be fair to say that prior to
23 coming to work for Care Free Homes you were fairly
24 comfortable using pneumatic tools?

Jonathan Beijar

10

1 A. Yes.

2 Q. And you understood how they worked?

3 A. Yes.

4 Q. And you understood the purpose of a
5 pneumatic nailer?

6 A. Yes.

7 Q. Would it also be fair to say you
8 understood that if they were not used properly, they
9 could create a danger?

10 A. Correct.

11 Q. So it's important to read the instructions
12 and the safety manual and follow them?

13 A. Correct.

14 Q. Because if you don't, you could get hurt
15 even if the tool is perfect. Right?

16 A. Correct.

17 Q. And that's something you knew back in
18 December of 2000 and January of 2001?

19 A. Yes.

20 Q. Did you receive any training on pneumatic
21 tools with Care Free Homes?

22 A. No.

23 Q. Can you tell me a little bit about your
24 educational background, please?

Jonathan Beijar

24

1 A. Correct. The nailer is connected to a
2 hose which is connected to a compressor, yes.

3 Q. And that's where the power comes from to
4 drive the nail, from the compressor?

5 A. Yes, the air, yes.

6 Q. And as long as that compressor is
7 connected to the tool, it is possible to drive a
8 nail under the right set of circumstances. Right?

9 A. I believe so, yes.

10 Q. And you knew that it would be possible for
11 a nail to be driven by a pneumatic nailer as long as
12 it was connected to that compressor even if you
13 didn't intend to drive a nail if the tool wasn't
14 properly handled. Right?

15 A. I don't understand what you mean.

16 Q. Bad question. I don't blame you.

17 You knew, did you not, that the purpose of
18 the pneumatic nailer was to make it easier to drive
19 nails into wood?

20 A. Yes.

21 Q. And to make it faster for the carpenter to
22 drive nails?

23 A. Yes.

24 Q. And you knew that the tool operates by

Jonathan Bejar

25

1 compressing the tip of the tool against something
2 hard and pulling the trigger. Right?

3 A. Yes.

4 Q. And that will cause a ram to cycle and
5 push the nail into the wood. Right?

6 A. Yes.

7 Q. And you knew also that if you had your
8 finger on the trigger and then touched the trip
9 against something hard, that would also cause the
10 tool to cycle?

11 A. Yes.

12 Q. That's something that carpenters
13 particularly like. Right?

14 A. I've seen people do it before, yes.

15 Q. They like to bump-fire?

16 A. Yes.

17 Q. By keeping their finger on the trigger and
18 bumping down, particularly when you're framing or
19 you're putting up sheetrock or something?

20 A. Yes, I've seen people do it before, yes.

21 Q. And the tool obviously can't tell the
22 difference between a piece of wood and your body,
23 can it?

24 MS. DAVIS: Objection.

Jonathan Beijar

27

1 Right?

2 A. Yes.

3 Q. Okay. Now, one of the instructions, I
4 take it, that you knew was not to pull the tool by
5 the airhose. Right?

6 A. Yes. But I never pulled a nailer by the
7 hose.

8 Q. I understand that. But you knew you were
9 not supposed to pull the tool by the airhose,
10 particularly while it was connected to the
11 compressor. Right?

12 A. Yes, sir. And I never did.

13 Q. And you wouldn't do that, would you?

14 A. No.

15 Q. Because if you did, it might swing and hit
16 you and hurt you. Right?

17 A. Well, you're not supposed to pull anything
18 by its cord.

19 Q. Sure. And particularly the reason you
20 don't want to pull a pneumatic tool like the nailer
21 by the airhose while it is under compression is that
22 it might go off. Right?

23 A. I guess.

24 Q. And it might cause you serious injury.

Jonathan Beijar

28

1 Right?

2 A. I guess so.

3 Q. And that's one of the reasons why you
4 would never pull a tool by the airhose, would you?

5 A. I never did.

6 Q. Right. And you wouldn't do it, would you?

7 A. No.

8 Q. And you knew that prior to January of
9 2001, didn't you?

10 A. Yeah.

11 Q. All right. Because to do something like
12 that would be to misuse this tool, wouldn't it?

13 A. Yes.

14 Q. To use the tool in a way it was never
15 intended to be used. Isn't that true?

16 MS. DAVIS: Objection.

17 A. Yes.

18 Q. Did you read the operator's manual before
19 you started using the tools that were on the
20 jobsite?

21 A. No.

22 Q. Were you given the opportunity to do so?

23 A. No.

24 Q. Did you ask to do so?

Jonathan Beijar

30

1 Q. All right. So that's why I'm calling it a
2 pneumatic tool or a nailer, because it's not
3 technically a gun. Okay? Just so we understand
4 we're talking about the same tool. Right?

5 A. Yes.

6 Q. You say you understood prior to going to
7 work for Care Free Homes how to use a nailer.

8 A. Yes.

9 Q. And you understood how they operated?

10 A. Yes.

11 Q. What was your understanding?

12 A. I know I just knew how to use them.

13 Q. If you wanted to drive a nail, what would
14 you do?

15 A. Well, you'd grab the nail gun, you would
16 have your finger on the trigger, you would push down
17 on I believe it's a foot depress, you push it down,
18 then you would pull the trigger.

19 Q. When you say the foot depress, are you
20 talking about the trip at the end of the tool?

21 A. I believe that's the name of it. I don't
22 really know.

23 Q. So if you had your finger pulled on the
24 trigger and then pushed the tip of the tool against

Jonathan Beijar

36

1 A. Well, we were working on this one side of
2 the house. We were cutting truss boards to finish
3 the roof off so we could put plywood on the top of
4 the roof because the roofers were there that day.
5 We were working on the side of the house. I can't
6 remember most of the people's names that I was
7 working with. I know there was a Wayne and there
8 was somebody else. I just can't remember their
9 names. One person was cutting boards and I was
10 bringing them over to the side and then putting them
11 up on the side of the house.

12 There was a lot of snow on the ground.
13 There was a big pile outside the window, because we
14 had shoveled the deck off. I had walked around the
15 pile. Someone said "Look out." I thought it was
16 one of the boards that I had put up was coming back
17 down, so I turned around; and when I turned around
18 the opposite way, the nail gun was right in front of
19 me. And just, that's basically all I can really
20 remember.

21 Q. When you saw the nailer right in front of
22 you, did you put your hand up?

23 A. Yes. I tried to push it away.

24 Q. You tried to deflect it?

Jonathan Beijar

37

1 A. Yes.

2 Q. Did you hit it?

3 A. I touched the hose about a foot and a
4 half, two feet from where it connects to the nail
5 gun.

6 Q. Did you hit any other part of the tool?

7 A. No.

8 Q. How do you know you didn't hit the
9 trigger?

10 A. Because I know my left hand was down to my
11 side and my right hand had gone up and touched the
12 hose.

13 Q. But as the tool was coming towards you,
14 you put your right hand up to deflect the tool. Is
15 that right?

16 A. Yes.

17 Q. As you put your right hand up -- And the
18 tool was moving towards you. Is that right? Do I
19 have this right?

20 A. It was right in front of me.

21 Q. But it was moving towards you. Correct?

22 A. Correct.

23 Q. As it was moving towards you and you put
24 your right hand up to deflect it and you hit the

Jonathan Beijar

38

1 hose, the hose was actually behind where the trigger
2 was, wasn't it?

3 A. I don't recall.

4 Q. Do you recognize what we have here?

5 A. It's a nail gun.

6 Q. Do you know if this is the tool that you
7 used on the day --

8 A. I couldn't tell you if that's the one.
9 I haven't seen it since the day of the accident, so
10 I'm not even sure if they supplied the same nail gun
11 that hit me in the chest.

12 Q. You don't know whether the tool that we
13 have here that I will now mark as Exhibit 2 is the
14 tool that injured you or not. Is that true?

15 A. I'm not sure.

16 Q. Does it look the same?

17 A. It looks similar.

18 Q. Does it look different in any way?

19 A. I know the nail gun that we were using was
20 fairly new. This doesn't look fairly new. It looks
21 like it's been worked on.

22 Q. Yeah, this one's been through some wars,
23 hasn't it?

24 Any other way this looks different?

Jonathan Beijar

39

1 A. Not that I know of. It looks like a
2 regular nailer. I'm not sure if it's the same one
3 or the same size, but it looks about the same.

4 Q. Was the nailer that you saw in front of
5 you a stick nailer like this one, a stick cartridge?

6 A. I believe so, yes.

7 Q. And they look to be about the same size?

8 A. Yes, about the same size.

9 Q. Now, as the tool was coming toward you,
10 was it upright like this so that the tip of the tool
11 was on top, or was it down like this so that the tip
12 of the tool was towards the ground?

13 A. When it fell and it hit me, it was facing
14 -- Could I see it?

15 Q. Please.

16 A. It was facing like this. This is right
17 around where I saw it and I put my hand up to grab
18 it. It was right around here. It was basically
19 right in my face, but the foot depress was pointing
20 down.

21 Q. The tip of the tool was pointing -- Oh,
22 okay. Could you stand up for just a minute so I can
23 describe this?

24 A. Yes.

Jonathan Beijar

40

1 Q. You have the tool now, Exhibit 2, in your
2 right hand. Correct?

3 A. Yes.

4 Q. And you've got the tip of the tool
5 pointing down towards your sternum at about a
6 30-degree angle from your body. Would that be
7 correct?

8 A. I'm not exactly sure what angle it was at
9 but it was coming down this way.

10 Q. With the tip pointed towards the ground?

11 A. Correct.

12 Q. And the back of the tool up towards your
13 head?

14 A. Yes.

15 Q. And then the cartridge went from the tip
16 off to the right at an angle of some sort. Correct?

17 A. Correct.

18 Q. And the trigger is right in front of your
19 eyes?

20 A. Correct.

21 Q. And that was where it was when you saw the
22 tool. Right?

23 A. I'm sorry? I don't know what you mean.

24 Q. You've just described for me the position

Jonathan Bejar

41

1 of the tool when you first saw it on the day of your
2 accident. True?

3 A. Yes.

4 Q. And how far was it away from you?

5 A. I don't know. It was right about here.
6 I'm not really sure of how close it was. I mean, I
7 looked to my left and when I looked back to my
8 right, it was right here, right around eye level.

9 Q. Right around eye level and within twelve
10 inches of you?

11 A. Yes.

12 Q. Pointing down?

13 A. Pointing down.

14 Q. And moving towards you?

15 A. Yes.

16 Q. And you put your right arm up?

17 A. Yes.

18 Q. What part of the tool did you hit with
19 your right arm?

20 A. I didn't touch the tool, I touched the
21 airhose.

22 Q. How do you know that you didn't brush the
23 trigger on the way by?

24 A. I don't see how I could have when my left

Jonathan Bejar

42

1 hand was down here and as soon as I turned to my
2 right, my right hand went up. I don't see how I
3 could have even came close to the trigger.

4 Q. Are you saying that you don't see how you
5 could have touched the trigger?

6 A. I know I didn't touch the trigger.

7 Q. All right. How do you know you didn't
8 touch the trigger?

9 A. Because I never touched the trigger. I
10 know I didn't.

11 Q. Was anything in your hands at the time?

12 A. No.

13 Q. Who was nearby you?

14 A. The fellow workers. I don't know exactly
15 who was right there because I went into shock as
16 soon as it hit me. I don't remember their names.
17 I don't know -- I know there was at least one person
18 close to me. I don't know if he was watching or....
19 I couldn't tell you.

20 Q. But you don't know who it was?

21 A. No. I don't remember their names.

22 Q. And the tool hit you, I take it?

23 A. Yes.

24 Q. After the tool hit you, did you ever see

Jonathan Beijar

45

1 nailers and....

2 Q. Which nailer did you use?

3 A. The framing nailer.

4 Q. And you said you used it two or three
5 times?

6 A. Yes, a couple of times, yes.

7 Q. Did you have any problems with it?

8 A. No.

9 Q. Did it operate as you expected it to?

10 A. Yes.

11 Q. As far as you were concerned, was that a
12 reasonably safe tool?

13 A. Yes.

14 Q. And it had the trigger that you and I have
15 discussed?

16 A. Yes.

17 Q. Which you could either press it down and
18 pull or pull and press and it would cycle?

19 A. I believe so. I never really pulled the
20 trigger and.... I can't remember the term that you
21 used, but banging it to fire, I never did that.

22 Q. Bump-fire, all right. But the trigger
23 operated the same way, the tool operated the same
24 way?

Jonathan Beijar

60

1 A. As I looked to my left, I started to look
2 back to my right and that's when the nail gun was
3 right in front of me.

4 Q. The nail gun was right in front of you.
5 Was your torso still facing the wall with the window
6 in it?

7 A. I honestly can't remember.

8 Q. You had turned to the right and the tool,
9 if I'm following this correctly, was pointing
10 basically up and down?

11 A. Yes.

12 Q. So that the tip of the tool was pointing
13 almost directly down?

14 A. Yes.

15 Q. And the black part of the tool was facing
16 the staging?

17 A. Yes.

18 Q. And it was connected to a hose. Correct?

19 A. Yes.

20 Q. And you put your hand up to the right.
21 Correct?

22 A. Yes.

23 Q. With the trigger almost directly in front
24 of you. Correct?

Jonathan Beijar

61

1 A. About, yes.

2 Q. Almost right in front of your nose.

3 Right?

4 A. Yes.

5 Q. That's where you were and it was twelve
6 inches away from you about?

7 A. I'm guessing. I'd say. I'm not really
8 sure how far away it was.

9 Q. That's where it was when you described it
10 to me earlier, though. Correct?

11 A. Yes.

12 Q. And you moved your right hand up to try to
13 deflect the tool?

14 A. Out.

15 Q. Out to the right?

16 A. Not really up but more (indicating).

17 Q. Out to the right?

18 A. Yes, up and out to the right.

19 Q. Didn't touch the tool at all. Is that
20 your testimony?

21 A. No.

22 Q. So is that correct?

23 A. Correct.

24 Q. When the tool hit you, did you hear

Jonathan Beijar

63

1 A. Sure. (Witness complied.)

2 MR. DUGGAN: And we'll mark that as
3 Exhibit 3.

4 (Beijar Exhibit 3 marked for
5 identification.)

6 BY MR. DUGGAN:

7 Q. A couple more questions about the scene.
8 How high up was the staging?

9 A. I couldn't begin to tell you. I'm not
10 sure.

11 Q. Could you touch it if you put your hand
12 up?

13 A. I don't believe so. I can't remember. I
14 know it was overhead. But how high, I don't believe
15 that you could've grabbed it, the staging or the
16 planks, by hand.

17 Q. Would that be more than ten feet high?
18 Would that be a fair estimate?

19 A. I'd say so, yes.

20 Q. Mr. Beijar, you were kind enough, you were
21 about to draw another diagram and I stopped you, and
22 I don't mean to interrupt you. What was the other
23 diagram you were going to draw?

24 A. I was just going to show you from looking

Jonathan Beijar

73

1 happened.

2 Q. As you put your right arm up, is it
3 possible that you touched the trigger?

4 A. No.

5 Q. Absolutely not?

6 A. No.

7 Q. Have you ever told anybody that you did?

8 A. No.

9 Q. If you touched the trigger, sir, and the
10 tip of the tool then hit you, that would have caused
11 the tool to cycle, wouldn't it?

12 A. Maybe. But I never touched the trigger.

13 Q. I understand that. But my question to you
14 is, because the tool was connected to a compressor
15 and it was moving toward you -- Right?

16 A. Yes.

17 Q. -- if you had touched the trigger and then
18 the tip of the tool hit you, that would have caused
19 it to cycle. Right?

20 MS. DAVIS: Objection.

21 A. I'm sure it would have.

22 Q. Alternatively, if the tool touched your
23 chest and you hit the trigger at the same time, that
24 would also cause the tool to cycle. Right?

Jonathan Beijar

75

1 A. I have seen one, yes.

2 Q. A Stanley operating manual?

3 A. A Stanley one?

4 Q. One of these, Bostitch.

5 A. Yes.

6 Q. Oh, you have?

7 A. Yes.

8 Q. Had you seen it before the accident?

9 A. Yes, but not by Care Free.

10 Q. Where did you see it?

11 A. My stepfather had one.

12 Q. And did you read it then?

13 A. I went through it. I didn't really read
14 the whole thing.

15 Q. Did you understand what was said there?

16 A. Yes.

17 Q. On the nailer that you did see on the
18 project there were warnings. This one is sort of
19 beat up, Exhibit 2. But there's a warning here on
20 the stick. Right?

21 A. Mm-hmm.

22 Q. Correct?

23 A. Correct.

24 Q. And there's another warning here that's

Jonathan Beijar

76

1 now been worn off. Right?

2 A. I believe so, yes.

3 Q. And there's actually warnings or
4 instructions on the housing too. Right?

5 A. I believe so, yes, to the best of my
6 knowledge.

7 Q. And the one that we do have that's still
8 here says to prevent serious injury from fasteners
9 and flying items, the first thing is read operation
10 manual. Right?

11 A. Yes.

12 Q. And you would agree that's a pretty good
13 practice, to read the manual?

14 A. Yes.

15 Q. And also over here on the same warning and
16 instruction where it talks about to prevent serious
17 injury from fasteners and flying items, disconnect
18 air when cleaning a jam, servicing, or tool not in
19 use. Right?

20 A. Yes.

21 Q. Would you agree that that's a pretty good,
22 safe practice?

23 A. Yes.

24 Q. That is a practice that was not followed

Jonathan Beijar

78

1 Q. Even though you were asked to use the
2 nailers?

3 A. Yes.

4 Q. And the very first thing it says is
5 "Before operating this tool, all operators should
6 study the manual." Right?

7 A. Yes.

8 Q. Would you agree that that's a good, safe
9 practice?

10 A. Yes.

11 Q. Is that something you had read in the
12 manual that your father-in-law showed you?

13 A. Yes. My stepfather.

14 Q. , I'm sorry, your stepfather, right.

15 And on the third page of the manual it
16 talks about the air supply connections and then it
17 says "Warning: Always disconnect air supply before
18 making adjustments, when servicing the tool, when
19 cleaning a jam, or when the tool is not in use."
20 Right?

21 A. Yes.

22 Q. And also when moving to a different work
23 area. Right?

24 A. Yes.

Jonathan Beijar

79

1 Q. "As accidental activation may occur,
2 possibly causing injury." Right?

3 A. Yes.

4 Q. Is that something you agree with?

5 A. Yes.

6 Q. Something you knew before your accident?

7 A. Yes, somewhat.

8 Q. You knew if you were moving a tool from
9 one area to another, you should disconnect the
10 airhose?

11 A. Well, not really. We never really did.

12 Q. You never did?

13 A. Well, I never hardly used the nail gun.
14 I used it a couple of times.

15 Q. But you knew that if the tool was to be
16 moved from one area of the jobsite to another, you
17 should disconnect the airhose so you don't
18 accidentally drive a nail. Right?

19 A. Yes.

20 Q. And that's what it says. Right?

21 A. Yes.

22 Q. It's pretty straightforward, isn't it?

23 A. Yes.

24 Q. And over on page 8 it has additional

Jonathan Beijar

80

1 warnings: "In addition to other warnings contained
2 in this manual, observe the following for safe
3 operation." Right? There's a list of things.

4 A. Yes.

5 Q. And one of them, the fourth bullet, is
6 "Always carry the tool by the handle; never carry
7 the tool by the airhose."

8 A. Yes.

9 Q. Is that something you knew prior to your
10 accident?

11 A. Yes, sir.

12 Q. And what's the purpose of not carrying the
13 tool by the airhose?

14 A. I'm not really sure.

15 Q. Do you think it might have something to do
16 with safety?

17 MS. DAVIS: Objection.

18 A. Possibly.

19 Q. And you knew that if you carried the tool
20 by an airhose and it was activated, it might go off?

21 MS. DAVIS: Objection.

22 A. I never carried it by the airhose.

23 Q. Why wouldn't you?

24 A. I never carried it by the airhose.

Jonathan Bejar

81

1 Q. Right. Because you know that that might
2 cause you injury if you did it that way. Right?

3 A. It's just not how we carried it. I never
4 really thought of it, you know, causing an injury.

5 Q. But you knew it would be improper to do
6 it, in any event?

7 A. Yes.

8 Q. It also says "Always be aware that misuse
9 and improper handling of this tool can cause injury
10 to yourself or others." True?

11 A. Yes.

12 Q. And you knew that before the accident.
13 Right?

14 A. Yes.

15 Q. It also says "Never leave the tool
16 unattended with the airhose attached." Right?

17 A. Right.

18 Q. And you knew that before the accident.
19 Correct?

20 A. Correct.

21 Q. And that was something that Care Free
22 Homes did not follow. Isn't that true?

23 A. Correct.

24 Q. Those are pretty easy instructions to

Jonathan Beijar

89

1 what happened.

2 Q. But in fact that's how you had used the
3 tool before, pressing the tip first and then pulling
4 the trigger?

5 A. And then pulling the trigger, yes.

6 Q. And as long as the tool is under
7 compression, hooked up to a compressor, that's going
8 to drive the tool, will it not?

9 A. Yes.

10 Q. And there's nothing wrong with a tool
11 acting in that way, is there?

12 MS. DAVIS: Objection.

13 A. To my knowledge, that nail gun, I'm not
14 sure. I never used that nail gun that day.

15 Q. Right. But my question is, if the tool
16 activates after the tip is depressed and the trigger
17 is pulled, there's nothing wrong with the tool, is
18 there?

19 A. I wouldn't -- I mean, to the best of my
20 knowledge, no.

21 Q. That's the way it's supposed to operate.
22 Right?

23 A. Yes.

24 Q. Where do you think the OSHA investigator

Jonathan Beijar

93

1 A. Yes.

2 Q. Have you ever seen that before?

3 A. No.

4 Q. This is dated about twelve days after your
5 accident. Correct? February 12.

6 A. Yes.

7 Q. It says "The use of hoses and/or cords to
8 move any power tool is not and never has been
9 allowed and is not proper procedure in moving any
10 power tool." Did I read that properly?

11 A. Correct.

12 Q. Is that an accurate statement?

13 A. What you just said?

14 Q. No. First of all, did I read it
15 correctly?

16 A. Yes.

17 Q. All right. Is that and was that the
18 policy of Care Free Homes?

19 A. They never really said anything to anyone.

20 Q. Prior to your accident they didn't inform
21 you of this policy?

22 A. No. It's just common knowledge.

23 Q. Why do you say that?

24 A. I mean, you don't pick things up by their

Jonathan Beijar

94

1 cords.

2 Q. Why not?

3 A. Because you can hurt yourself or someone
4 else or you can break the tool.

5 Q. So even though you were not instructed in
6 that by Care Free Homes, you knew that prior to your
7 accident?

8 A. Correct.

9 MR. DUGGAN: Off the record.

10 (Discussion off the record.)

11 BY MR. DUGGAN:

12 Q. Mr. Beijar, can you take me through a
13 chronology of your treatment? Where did you go
14 first?

15 A. From the worksite I went to Cape Cod, I
16 think it was Cape Cod Medical Center.

17 Q. Is that in Hyannis?

18 A. I believe so. After that, as soon as I
19 got there they gave me pain meds and they put me
20 out. And the only thing I know of is that I got
21 flown to Boston, I think at -- I think it was Boston
22 Medical Center.

23 Q. How long were you in the hospital?

24 A. A couple days. I'm not exactly sure how

Jonathan Bejar

109

1 Q. As far as you're concerned anyway.

2 A. As far as I'm concerned, no.

3 Q. And if the accident happened as described
4 in that OSHA report, there'd be nothing wrong with
5 this tool either. Isn't that true?

6 MS. DAVIS: Objection.

7 A. I believe so. That report's not right.

8 Q. I understand. But if that report was
9 accurate, there would be nothing wrong with this
10 tool that caused the injury. Isn't that true?

11 MS. DAVIS: Objection.

12 A. I don't know about if there was anything
13 wrong with the nail gun, but....

14 Q. My question, though, is a little different
15 than that. My question was: If an accident
16 happened, maybe not yours, somebody else's accident
17 happened as described in Exhibit Number 10, the
18 narrative portion, that would not be the fault of
19 the tool, would it?

20 MS. DAVIS: Objection.

21 A. I believe not. I'm not sure.

22 Q. Well, even as you testified before, that
23 would be a plain misuse of the tool, wouldn't it?

24 A. Oh, yes.

WITNESS: Jonathan Beijar
DATE: April 27, 2004
CASE: Jonathan Beijar v. Stanley Fastening
Systems, L.P.

SIGNATURE INFORMATION FOR COUNSEL

The original signature page/errata sheet has been sent to Jennifer L. Davis, Esq., to obtain signature from the witness. When signed, please send original to Christopher A. Duggan, Esq., who will supply a copy of the signed errata sheet to other counsel present.

WITNESS INSTRUCTIONS

After reading the transcript of your deposition, please note any change or correction and the reason for it on the errata sheet. Do not make any notations on the transcript itself. Use additional sheets if necessary. Sign and date the errata sheet and return it, along with the transcript, to your counsel.